NO. 83-982

In The
Supreme Court of the United States
October Term, 1983

JAMES DEAN BRIDGES
AND PERCY GARCIA,

Petitioners,

vs.

McLENNAN COUNTY, TEXAS,

Respondent.

BRIEF IN OPPOSITION TO BRIDGES AND GARCIA'S PETITION FOR WRIT OF CERTIORARI

HALEY AND DAVIS
W. C. HALEY, P.C.

4800 Lakewood Drive, Suite 5
Waco, Texas 76710
(817) 776-3336
Bar Card No. 08743000

Counsel for Respondent

COCKLE PRINTING CO., 2311 Douglas St., Omaha 68102

RESPONDENT'S COUNTERPOINTS

1. The "exclusionary rule" does not apply to this civil interpleader suit instituted by the City of Waco, Texas, wherein judgment was that McLennan County (Texas) was entitled to possession of the money and property under Texas statutes providing that stolen property should be held by McLennan County for the rightful owner.

2. In the civil interpleader suit, the evidence was that Petitioners stole the money (which fact was actually admitted by Petitioners), which proof by the County was substantuated by the jury finding that Petitioners stole the money.

LIST OF INTERESTED PARTIES

1. James Dean Bridges and Percy Garcia, Petitioners.

2. McLennan County, Respondent.

3. The State of Texas did not appeal from the District Court's Judgment.

4. The Internal Revenue Service has not appealed from the Judgment of the Fifth Circuit Court of Appeals.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES—Continued

NO. 83-982

In The
Supreme Court of the United States
October Term, 1983

JAMES DEAN BRIDGES
AND PERCY GARCIA,

Petitioners,

vs.

McLENNAN COUNTY, TEXAS,

Respondent.

BRIEF IN OPPOSITION TO BRIDGES AND GARCIA'S PETITION FOR WRIT OF CERTIORARI

REFERENCE TO OFFICIAL AND UNOFFICIAL OPINIONS BELOW

The Petitioners' petition correctly states that the opinion of the United States District Court for the Western District of Texas is included in their appendix and cited as *City of Waco, Texas v. Bridges* 710 F.2d 220 (5th Cir. 1983).

STATEMENT OF JURISDICTION

The Petitioners' petition correctly states the action of the Court of Appeals for the Fifth Circuit.

Respondent does not contest the jurisdiction of this Honorable Court.

CONSTITUTIONAL PROVISIONS AND STATUTES

The Petitioners' petition correctly reflects the constitutional provisions and statutes involved.

STATEMENT OF THE CASE

Petitioners' statement of the case is substantially correct in stating the nature of the case with the following corrections or modifications:

1. Throughout Petitioners' brief they contend that the money involved was not stolen by Petitioners and/or that McLennan County did not prove theft of the money by Petitioners. Petitioners, upon being arrested and afterwards, readily admitted that they had stolen the money. This was proved by McLennan County and the jury, upon ample proof, found that the money was stolen under the terms of the Texas law of theft. Such admissions and evidence are set out as demonstrated in Appendix 1 to this brief.

2. By innuendo, Petitioners seem to indicate that the money in question belonged to Bridges' father. The

testimony clearly showed the money did not belong to Bridges' father and, further, Bridges' father was cited to appear in the suit and completely defaulted. The testimony showing the money did not belong to Bridges' father is also set out in Appendix 2 to this brief.

3. Petitioners contend that this is a forfeiture proceeding following a warrantless search of the automobile for the purpose of obtaining evidence of a crime, but Bridges' "Statement of the Case" in the circuit court says, "The car was also driven to the police station where an immediate *inventory* search was begun on vehicle." (Bridges' brief in the circuit court, p. 4, emphasis mine.) It is not a forfeiture proceeding. Neither the City of Waco, McLennan County nor anyone else made any attempt to forfeit the money as contraband.

McLennan County never contended that the money was contraband or subject to forfeiture, but it does contend that since the money was stolen, neither Bridges nor Garcia have title to the property.

The simple facts of this case are that the money in question was stolen from an unknown owner or owners and, by reason of such fact, neither Bridges nor Garcia owned the money and neither had an interest in the money; that the City of Waco interpleaded the money into court so that the owner, if found, could prove ownership; that Bridges and Garcia failed to prove ownership or a right to the money; that the true owner remains unknown; and that the trial court correctly placed possession of the money with Respondent, McLennan County, who stands in the shoes of the true owner by virtue of Texas law.

SUMMARY OF ARGUMENT

(A) The trial court did not err in admitting the money into evidence which money is the subject of this interpleader suit and did not err in admitting the statements of Bridges and Garcia in order for the court to determine ownership of such money. *United States v. Ross,* —— U.S. ——, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982); *South Dakota v. Opperman,* 428 U.S. 364, 96 S.Ct. 3092, 49 L.Ed.2d 1000 (1976).

(B) Some of the complaints about the jury charges, made here, are not preserved in the record; the court's charge was correct and fairly submitted the case to the jury; and Petitioners have not shown harm or prejudice as a result of the manner in which the case was submitted to the jury.

(C) The evidence conclusively shows, and is supported by the jury finding, that the subject money was stolen by Petitioners and, therefore, Bridges and Garcia had no title to the property or an interest in the money, and the true owner having failed to appear and claim the money, the trial court properly awarded possession of the money to McLennan County who stands in the shoes of the true owner by virtue of Texas law.

ARGUMENT

A. Exclusionary Rule Not Applicable

Restatement of A

The trial court did not err in admitting the money into evidence, which money is the subject of this inter-

pleader suit, and did not err in admitting the statements of Bridges and Garcia in order for the court to determine ownership of such money. *United States v. Ross,* — U.S. —, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982); *South Dakota v. Opperman,* 428 U.S. 364, 96 S.Ct. 3092, 49 L.Ed. 2d 1000 (1976).

Argument Under A

This is a simple civil interpleader suit brought by the City of Waco, Texas, to determine ownership of approximately $500,000 in cash discovered by City of Waco police during an inventory search of an automobile in possession of Petitioners after they had been arrested for traffic violations, for no driver's license and for questioning regarding possession of the automobile not registered to them. There is no contention by Petitioners that the arrest was illegal. *South Dakota v. Opperman,* 428 U.S. 364, 96 S.Ct. 3092, 49 L.Ed.2d 1000 (1976).

Waco police took possession of the money under Texas statute, that being:

> An officer who comes into custody of property alleged to have been stolen must hold it subject to the order of the proper court or magistrate. Tex. Code Crim. Proc. Ann., Sec. 47.01 (Vernon 1977).

After the City of Waco interpleaded the money in court, it asserted no further claim to the money. Thereafter, McLennan County (in which county Waco is situated) intervened in the suit, claiming that Petitioners were not entitled to the money and that if the true owner did not prove his title to the money in court, McLennan County was entitled to the money under Section 18.17 of the Texas Code of Criminal Procedure which in part states:

> (A) All unclaimed or abandoned personal property of every kind . . . seized by any state or county peace officer in the State of Texas . . . shall be delivered . . . to the purchasing agent of the county in which the property was seized. (See Petitioners' Brief, p. A-37 and A-38, for complete article.)

The Petitioners admitted the money was stolen and the jury (in the terms of Texas law) found that the money was stolen.

The trial court and the Fifth Circuit Court held that the money and property should be delivered to the possession of McLennan County.

Petitioners lay great stress upon the fact that Petitioners were never convicted in a criminal trial of the offense of theft. Reference is made three or four times to this fact in Petitioners' Brief. As far as McLennan County is concerned, this is readily explained by the fact that although the money was discovered in McLennan County, the money was stolen in Jim Wells County, Texas. It would have been very presumptuous on the part of McLennan County to insist upon a criminal trial for theft in Jim Wells County, where the evidence of taking was situated. If the authorities in Jim Wells County did not have any interest in prosecuting Petitioners for theft, there is certainly no reason why McLennan County should undertake to do so. There is no evidence in the record to indicate why either county did not prosecute a criminal case against Petitioners. If either county had done so, such prosecution would not have changed the proceedings in this interpleader suit, nor would it have changed the quantum of proof or admissibility of evidence in this interpleader suit. This argument of Petitioners, like their argument on the ques-

tion of "exclusionary rule," is thrown up by Petitioners as a straw man for them to shoot at.

McLennan County's only interest in this civil interpleader suit was to obtain possession of the money as they were entitled to do under Texas law until the rightful owner appeared and proved ownership. The fact, if it is a fact, that the true owner may not appear and claim possession of the money does not change the law that McLennan County was entitled to possession of the money as found by the trial court.

It was stated by the Fifth Circuit in its opinion, "Indeed, only Garcia and Bridges have ever alleged the money to be contraband, a position which they later refuted." Clearly, Petitioners contend that this is a case of forfeiture of contraband so that they may argue the "exclusionary rule" in reference to the evidence that was admitted.

The trial court and the circuit court upon adequate and sufficient evidence found:

1. That there was not an unconstitutional or illegal search;

2. That this is not a criminal or quasi-criminal proceeding;

3. That Petitioners stole the money and, therefore, do not have a right to title or possession of the money; and

4. That McLennan County is the proper authority to hold the money should the proper and legal owner of the money appear.

Petitioners cite the case of *United States v. Janis,* 96 S.Ct. 3021 (1976). In the case of *United States v Janis,* 428 U.S. 433, 96 S.Ct. 3021, 49 L.Ed.2d 1046 (1976) (a civil suit to collect tax assessments in which it was urged that the "exclusionary rule" prohibited the admission of unconstitutional and unlawfully seized evidence), the court stated:

> We therefore hold that the judicially created exclusionary rule should not be extended to forbid the use in the civil proceeding of one sovereign of evidence seized by a criminal law enforcement agent of another sovereign.

The *Janis* case has been cited in the following cases for the proposition that the "exclusionary rule" does not apply in civil cases: *Stone v. Powell,* 428 U.S. 465, 96 S.Ct. 3037, 3055, 49 L.Ed. 2d 1067 (1976) (Burger, C. J., concurring); *United States v. Martinez Fuerte,* 428 U.S. 543, 96 S.Ct. 3074, 3088, 49 L.Ed.2d 1116 (1976) (Brennan, J., dissenting); *Franks v. Delaware,* 438 U.S. 154, 98 S.Ct. 2674, 2682, 57 L.Ed.2d 667 (1978); and numerous opinions of courts of appeal and district courts.

In the *Janis* case, this Honorable Court reasons that the "exclusionary rule" has no application where the officers or agents of one sovereign obtain the questioned evidence and another sovereign introduces the evidence in a judicial proceeding because the use of the evidence (or the court's rejection of such evidence) would be no deterrent to the first sovereign or its agents. The same reasons render the questioned evidence admissible here. If the court here had refused to admit the evidence when introduced by McLennan County, such would not be a deterrence to the officers of the City of Waco, a separate and

independent political subdivision. The City of Waco made no effort to introduce the money in evidence (other than deposit the money in court when it filed this interpleader suit). *Janis* is, therefore, authority for the admissibility of the evidence, instead of otherwise as argued by Petitioners.

In our case, there was no unconstitutional or illegal search and seizure because the police were not searching for evidence at the time they took possession of the money, but were instead making an inventory search of Petitioners' automobile and only took custodial possession of both the automobile and the money, rather than taking possession for the purpose of introducing the money into evidence in order to convict Petitioners. It is inconceivable that exclusion of the money from evidence in this civil interpleader suit would in any way deter the police of the City of Waco in the future. In this case, the ". . . marginal deterrence provided by forbiding a different sovereign from using the evidence in a civil proceeding surely does not outweigh the cost to society of extending the rule to that situation." *Janis,* 96 S.Ct. at 3032.

Under the authority of *United States v. Janis,* 428 U.S. 433, 96 S.Ct. 3021, 49 L.Ed.2d 1046 (1976); *Stone v. Powell,* 428 U.S. 465, 96 S.Ct. 3037, 49 L.Ed. 2d 1067 (1976); *Franks v. Delaware,* 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978); *United States v. Calandra,* 414 U.S. 338, 94 S.Ct. 613, 38 L.Ed.2d 561 (1974); the "exclusionary rule" is simply not applicable to this civil interpleader suit filed by the City of Waco to determine ownership of the money possessed by the Police Department of the City of Waco in this inventory search. *South Dakota v. Opperman,* 428 U.S. 364, 96 S.Ct. 3092, 49 L.Ed.2d 1000 (1976); *United*

States v. Ross, — U.S. —, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982).

B. Court Submitted Correct Charge

Restatement of B

Some of the complaints about the jury charge, made here, are not preserved in the record; the court's charge was correct and fairly submitted the case to the jury; and Petitioners have not shown harm or prejudice as a result of the manner in which the case was submitted to the jury.

Argument Under B

This portion of Respondent's argument replies to Petitioners' complaints to the manner of the court's submission to the jury.

Both of Petitioners' objections to the charge were very general, such as ". . . the Court does not affirmatively charge on the law applicable to the facts developed in this case," (5-R 499) ". . . it (the charge) does not follow or track or attempt to follow or track the law of the State of Texas as it applies to theft . . . " (5-R 499), "It does not charge the jury as to the ownership which is contrary to the facts in this case and particularly as was testified by the Defendant, James Dean Bridges, and the final statement of the final questions asked of him as to who the owner of the money was, his answer was himself." (5-R 500)

By a generous interpretation of Bridges' and Garcia's objections, it might be said that two specific objections were made to the charge: (1) that the question on theft (question No. 1) was submitted in the disjunctive instead

of the conjunctive (". . . knowing or believing that the owner of the money could be found"); and (2) the evidence did not raise the issue of "mislaid" property.

Petitioners argue here that the charge was erroneous because question No. 1 was submitted ". . . without the consent of the owner . . ." instead of ". . . without the effective consent of the owner . . .," but no specific objection was submitted to the trial court on this complaint.

Petitioners agreed with the trial court that the only issue to be submitted to the jury was whether or not the money was stolen.

The trial judge fairly submitted the theft issue in the words of the Texas statute with the addition to cover the law of unknown owner as set out in the case of *Williams v. State,* 268 S.W.2d 670 (Tex.Crim.App. 1954). *Texas Penal Code,* Sec. 31.03, states:

> (a) A person commits an offense if, with intent to deprive the owner of property:
>
> . . . (2) he exercises control over the property, other than real property, unlawfully.
>
> (b) Obtaining or exercising control over property is unlawful if:
>
> (1) the actor obtains or exercises control over the property without the owner's effective consent . . .

The case of *Williams v. State* by the Court of Criminal Appeals, 268 S.W.2d 670, states: "If at the time property is found the finder forms the intent to appropriate it and does so, knowing and believing that the owner can be found, he is guilty of theft."

The court submitted to the jury the following questions and the jury answered as indicated:

Question No. 1—Do you find from a preponderance of the evidence that James Dean Bridges intended to exercise control over the money in question, and did so, without the consent of the owner, knowing or believing that the owner of the money could be found?

Answer 'We do' or 'We do not.'

We, the jury, answer 'We do.'

If you have answered Question No. 1 'We do not,' then answer Question No. 2, otherwise do not answer Question No. 2.

Question No. 2—Do you find from a preponderance of the evidence that the money in question was 'mislaid' at the time James Dean Bridges and Percy Garcia dug it up?

You are instructed that the term 'mislaid' means money which the owner intentionally places where he can again resort to it and then forgets where he placed it.

Answer 'We do' or 'We do not.'

We, the jury, answer (no answer). (1-R 603)

The issue on "mislaid" was conditionally submitted upon a negative reply to question No. 1 without objection from any party. When the jury answered question No. 1, "We do," this effectively eliminated the necessity to answer question No. 2 and effectively eliminated any question of "mislaid" or "abandoned" property and any question of whether the evidence supported such issue.

On the question of "abandoned" property, it is clear from the record that the trial judge considered "mislaid" to be synonymous with "abandoned" property and did not consider it necessary to submit both. In the judge's conference with the attorneys concerning the charge, he stated:

> THE COURT: -Well, I will probably ask them about both because if the jury doesn't believe it was stolen, they will probably say it was abandoned. (5-R 480)

Obviously, the trial judge considered the terms" mislaid" and "abandoned" to be synonymous. In the event the two terms were not to be considered synonymous, there is no evidence in the record whatsoever that this money was abandoned at the time it was "stolen" by Bridges.

Petitioners have made no effort whatsoever to show that any alleged error, complained of by them in connection with the manner in which the court submitted this case to the jury, caused the rendition of an improper judgment in this case or caused them harm. It is completely inconceivable that if the court had submitted question No. 1 in the disjunctive instead of the conjunctive or the court had submitted question No. 1, ". . . without the *effective* consent of the owner . . ." instead of ". . . without the consent of the owner . . .," that the jury would have reached a different verdict than the verdict which was reached.

The manner in which the case is submitted to the jury is within the sound judicial discretion of the trial judge and will not be disturbed except upon an abuse of that discretion. *Dreiling v. General Electric Company,* 511 F.2d 768 (5th Cir. 1975).

The trial court fairly submitted the issues to the jury in his charge and it was not subject to the objections levied against the charge by Petitioners. Petitioners made no effort to show prejudice or harm by the manner in which the court submitted the case to the jury.

C. Petitioners Have No Title To Stolen Property

Restatement of C

The evidence conclusively shows, and is supported by the jury finding, that the subject money was stolen by Petitioners and, therefore, Bridges and Garcia had no title to the property or an interest in the money, and the true owner having failed to appear and claim the money, the trial court properly awarded possession of the money to McLennan County who stands in the shoes of the true owner by virtue of Texas law.

Argument Under C

Petitioners complain that the court did not use the criminal law burden of proof "beyond a reasonable doubt" rather than proof by a "preponderance of the evidence." In this interpleader suit, each party was charged to prove his or its claim to the money by a "preponderance of the evidence." Petitioners failed to prove ownership or a right to possession of the money and failed to get a jury finding of such fact. As shown in the evidence set forth in Appendix 1 hereto, McLennan County proved its right of possession under the evidence and Texas law. Petitioners admitted shortly after their arrest that the money was stolen money, and the evidence clearly sustained the finding of the jury that it was stolen money. This civil interpleader trial had no indicia, implications or characteristics of a criminal trial. In no event could Petitioners have been convicted of a crime in this proceeding. There was no quasi-criminal implication in this trial such as forfeiture of contraband.

Petitioners did not show in the trial court nor the court of appeals and have not shown here any violation of due process of law or equal protection of the laws. Petitioners have simply failed to prove ownership or right to possession of the money in this case, but instead, by admitting that they stole the money, proved under Texas law, they do not have any ownership or right to possession of the money. The money was properly placed in the possession of McLennan County, where it shall remain subject to the claim of the true owner of the money. Petitioner's father has not claimed the money or shown ownership and the evidence shows that Petitioner's father was not the owner of the money. The money properly remains with McLennan County subject to the claims of the true owner of the money.

If Petitioners' position can be construed to mean that a thief in Texas owns or is entitled to possession of the stolen property, such contention is simply not true.

A thief has no title to the stolen property. In the Texas Supreme Court case of *McKinney v. Croan,* 144 Tex. 4, 188 S.W.2d 144 (1945), a stolen automobile and stolen blank certificate of title were involved. The Supreme Court of Texas stated:

> It appears to be a settled rule that a purchaser of property from one who has acquired possession thereof by theft, acquires no title thereto. 10 Am.Jur. 622, 55 CJ 635, 37 Tex.Jur. 494; *Reed v. Lucas,* 42 Tex. 529.

In the case of *Walker v. Caviness,* 256 S.W.2d 880 (Tex. Civ. App. 1953, no writ), cattle were stolen and sold to one person who took them to Texarkana to the packing house and sold them; suit by original owner against in-

termediate handlers and also against the livestock company. It was undisputed that the cattle were stolen from the original owner. Trial court judgment for the original owner was affirmed. The court stated:

> It is appellees' contention that the cattle having been stolen, title never passed out of the owners, and that neither the thieves nor anyone else holding through or under them could transfer the title to said cattle. We find no cases from Texas court and we have been referred to none where the issue presented here has been decided. The courts of other states have ruled both ways on the question. The common law rule is that a thief can never pass title to stolen goods, neither can anyone to whom he has attempted to transfer title. All parties to this appeal admit the above rule to be correct and that the appellant would be liable to appellees unless absolved by the regulations of the Department of Agriculture (it was undisputed that Four States Livestock Commission Company was duly licensed as a marketing agency under the Packers and Stockyards Act of 1921, P.S.A. of 1921, 7 U.S.C.A., Section 181-231).

This case holds that Packers and Stockyards Act does not absolve Appellants and affirms the judgment of the trial court for the original owner.

Texas Jurisprudence states:

55 Tex.Jur.2d *Theft*—Section 321, Page 589:

> *Section 321*—Disposition of stolen property
>
> An officer who comes into custody of property alleged to have been stolen is required by statute to hold it subject to the order of the proper court or magistrate (CCP Art. 933). The code further provides for the restoration of the property to the owner and the disposition to be made of it in case it is not claimed (CCP ASrt. 934-943).

An arresting officer who finds stolen property in possession of another must take charge of it and hold it subject to the order of the examining magistrate or trial court. He does not come into possession of the property unlawfully or as a trespasser, and the principles that possession is sufficient title on which to maintain an action against a trespasser and that a trespasser cannot justify the trespass by pleading title in a third person do not apply in a suit by the owner to recover the property. (*Murray v. Lyons* (CA) 95 S.W. 621)

Section 322—Title to stolen property

The owner retains title to money or property taken by theft, and he is not guilty of robbery in retaking it from the thief.

A thief cannot, as a general rule, pass title to stolen property even to an innocent purchaser; neither can anyone to whom he has attempted to pass title. The owner may recover it from such a purchaser unless by his acts or omissions he is estopped to claim title as against him.

In the case of *Tregellas v. Jake's Casing Crews, Inc.*, 376 S.W.2d 792 (Tex. Civ. App. 1964, ref. n.r.e.), the court stated:

> Under the quoted statute we believe Garber was guilty of theft by Bailee in selling the property while he had it under bailment. Therefore Tregellas had no better title than that of a thief which would not give him any title.

See also *Jamison v. Sockwell*, 405 S.W.2d 618 (Tex. Civ. App. 1966, ref. n.r.e.); *Chapman Motors, Inc. v. Taylor*, 506 S.W.2d 724 (Tex. Civ. App. 1974, ref. n.r.e.) .

———o———

CONCLUSION

Respondent respectfully prays that Petitioners' Petition for Writ of Certiorari be in all things denied.

Respectfully submitted,

HALEY AND DAVIS
W. C. HALEY, P.C.

4800 Lakewood Drive, Suite 5
Waco, Texas 76710
(817) 776-3336
Bar Card No. 08743000

Counsel for Respondent

APPENDIX 1

The following excerpts from the testimony constitute admissions from Appellant Bridges that he stole the money in question:

Bridges' testimony:

"Q. I hand you what has been marked as State's Exhibit 9. I am going to ask you if you can identify it.

A. Yes, sir.

Q. What is that, please? Are they not answers to some interrogatories served on you earlier and answered by you, is that correct?

A. Yes, sir.

Q. Attached to it is something called a petition for redetermination of deficiency. Do you recognize that?

A. I don't know too much about this sort of stuff.

Q. I understand that, but you just testified about the petition, what it contained.

A. Yes, sir. It said something about that.

Q. Referring you to Exhibit 9, would you please read this paragraph to the jury?

A. 'The income in question, $500,000, was stolen by the petitioner on January 31, 1977, from unknown persons on a ranch in south Texas.'

Q. You see a date on this petition?

A. 6-16-77.

Q. Now, this is some six months after you were arrested and after you were kept in custody, is that correct?

A. Yes, sir." (4-R, 101-102)

Carlile's testimony:

"Q. Mr. Carlile, would you please read from Plaintiff's Exhibit 10 beginning at the day the statement was taken?

A. Yes. 'February 1st, 1977, time 9:27 A.M. to 10:10 A.M., place: Waco, Texas Police Department.' . . .

THE COURT: Okay, go ahead.

A. '300 West Waco Drive, Texas. Parties: James Dean Bridges, taxpayer; Woodrow C. Carlile, revenue agent, James Walker, special agent. 'Bridges was advised of his Constitutional rights.' . . .

Q. Right. Would you please continue reading what Mr. Bridges said.

A. 'Bridges said he stole the money that he had when he was arrested. Bridges said he stole $500,000 but used $12,000 to buy a car. Bridges said he could not say where it came from because it would prove dangerous to him. Bridges refused to identify the man from whom he stole the money or the location of the ranch where he stole the funds. Bridges said he stole the money in south Texas from a man who used to be a dope dealer. Bridges said five or six months ago he saw four men with vans talking to the man at the ranch. Bridges furnished the following information concerning these four men: Bill Quint was the name of one of the men. His name was on a green van. He was from Kansas City, Missouri, or Independence, Missouri. Robert K. Clifton, Kansas City, Missouri. He drove an old Ford van. A man known only to Bridges as Jim, he was from Kansas City, Missouri, and drove a silver van and a man known only as Little Bobby to Bridges. Bridges said he suspects the four men of being dope dealers. Bridges says he did not suspect them of being

involved in narcotics until he discovered the large amount of cash buried on the ranch. Bridges says he saw the man from whom he stole the funds digging around the ranch without the man knowing he was being watched. Bridges says he saw the man remove some cash from a hole in the ground. According to Bridges this was several weeks after the four men in vans visited the ranch. Bridges says on January 30th, 1977 he stole the money after digging it up where he saw the man digging. Bridges said another individual was with him but he refused to identify the person. Bridges says he had not suspected the man who earlier dug up some cash of being involved in narcotics until he saw the large amount of currency. Bridges said the unidentified man who had the funds was not related to him in any way, not even by marriage. . .' " (4-R, 272-275)

Ranselben's testimony:

"Q. All right. The assessment, did it contain a statement to the effect as to the origin of the money with respect to James Dean Bridges?

A. The notice of deficiency did not. The notice of termination did, yes, sir.

Q. What is termination?

A. The notice of termination whereby the Revenue Service exercised their right to shut his year down from twelve months to one month, stated in there the source of the money, yes sir.

Q. What was the terminology used in that termination?

A. The terminology in the notice of termination stated to the effect that Dean Bridges had stolen the money from person or persons unknown on a ranch in south Texas." (4-R, 370-371)

APPENDIX 2

The following excerpts from the testimony prove that this money did not belong to Bridges' father.

Bridges' testimony:

"Q. Have you ever seen your father with the money, by that I mean, Mr. Hiroms?

A. No. sir, I never did.

Q. Either in the house, out by the quail pen or at any time?

A. I don't see how he could have ever got that much money." (O-R, 95-96)

"Q. If you asked your father, do you think he would have known whose money it was?

A. No, sir.

Q. Why?

A. I have seen him. He didn't say nothing about it. I didn't ask him. I don't believe he would know who would have that kind of money anway." (4-R, 106)

"Q. You are not claiming this for any other undisclosed principals like your father, are you?

A. No, sir." (4-R, 112)

"Q. Has he (his father), since 1977, told you it was all right to have this money? (Interpolation within parenthesis added.)

A. It isn't his money." (4-R, 113)

"Q. At any time did your father ever indicate—I'm talking about 1977—that he wanted to hurt you in any ways?

A. No, sir.

Q. Did he ever make any claim to you for the money?

A. No, sir." (5-R, 458)

Garcia's testimony:

"Q. Did you make any effort to find out who it belonged to?

A. No, sir.

Q. Did you ask anyone if this was their money?

A. No, sir.

Q. Did you ask Mr. Hiroms if it was his money?

A. No, sir.

Q. Would it be fair to say if you had asked Mr. Hiroms, he would have said it was his money?

A. No, sir." (4-R, 130)

"Q. And you saw Mr. Hiroms down there?

A. Yes, sir.

Q. And was that after the indicent had become known here with respect to you and Dean having the money on you?

A. Yes, sir.

Q. Did Mr. Hiroms say anything to you about the money belonging to him?

A. No, sir.

Q. Did he approach you and tell you that the money did belong to him?

A. No, sir." (4-R, 143)

Rose's testimony:

"Q. All right. I will ask you to state for us in the record the statement that he made, and if you can't recall it exactly—

A. I don't recall it exactly but he said his father, or he had seen someone late at night, someone burying an ice chest in the back yard.

Q. Okay. Did he state to you who it was that buried the ice chest or who he thought it was?

A. No.

Q. Did he state to you he saw them bury it in the back yard?

A. Yes, in the shed or whatever, the chicken pen."

Carlile's testimony:

"Q. Mr. Carlile, would you please read from Plaintiff's Exhibit 10 beginning at the day the statement was taken?

A. Yes. 'February 1st, 1977, time 9:27 A.M. to 10:10 A.M., place: Waco, Texas Police Department.' . . .

THE COURT: Okay, go ahead.

A. '300 West Waco Drive, Waco, Texas. Parties: James Dean Bridges, taxpayer; Woodrow C. Carlile, revenue agent; James Walker, special agent.

'Bridges was advised of his Constitutional rights.' . . .

Q. Right. Would you please continue reading what Mr. Bridges said.

A. '. . . Bridges said the unidentified man who had the funds was not related to him in any way, not even by marriage. . .'" (4-R, 272-275)